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09/928,273	08/09/2001	John D. Ralston	9824-075-999	6570

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EXAMINER

GEREZGIHER, YEMANE M

ART UNIT PAPER NUMBER

2144

DATE MAILED: 03/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/928,273

**Applicant(s)**

RALSTON ET AL.

**Examiner**

Yemane M Gerezgiher

**Art Unit**

2144

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 August 2001.  
2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.  
    4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-26 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 09 August 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
    a) ☐ All    b) ☐ Some \*    c) ☐ None of:  
        1. ☐ Certified copies of the priority documents have been received.  
        2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
        3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
    \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
    Paper No(s)/Mail Date 11/13/2001.  
4) ☐ Interview Summary (PTO-413)  
    Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

1. This application has been examined. Claims 1-26 are pending.

**Claim Rejections - 35 USC § 112**

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The inventive entity recite, "...fixed portion of hardware and a flexible portion of hardware..." (Claim 1 Claim Line 6, Claim 10 Claim Line 6, Claim 14 Claim Line 10 and Claim 23 Claim Line 10). It is unclear what the applicant is trying to encompass by making use of the phraseology ("fixed portion of hardware and a flexible portion of hardware"). For example, it is not clear whether the flexible portion is a removable (physically flexible) memory such as a SIM card or it is directed to indicate a different arrangement of a network communication device.

However, for examination purpose, the Examiner will broadly interpret the functional limitation to mean a non-programmable (fixed) and programmable (flexible) portion of hardware such as a flash memory.

**Claim Rejections - 35 USC § 102**

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1, 2, 14 and 15 are rejected under 35 U.S.C. 102(e) as being anticipated by Reichmeyer et al. (U.S. Patent Number 6,286,038) hereinafter referred to as Reichmeyer.

Regarding to claims 1 and 14:

a) receiving a request to configure the communication device to run a communication application, the communication device having a plurality of function blocks with a fixed portion of hardware and a flexible portion of hardware, the same plurality of function blocks capable of operating a plurality of communication applications; (See ABSTRACT, Column 3 Lines 13-41: Reichmeyer disclosed a configuration server receiving a request from a network device on the network for configuration, the network device having therein a multiple functional blocks which are static or flash (flexible) portions in support of executing communication applications).

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b) evaluating a capability of the fixed portion and the flexible portion of hardware of the communication device for implementing the communication application; (See Fig. 4 Column 2 Lines 50-64, Column 3 Lines 13-41, Column 7 Lines 1-26 and Column 8 Lines 18-42: Reichmeyer disclosed receiving information determining the status of static (fixed) and flash portions of the network device regarding the propagated to the configuration server and determining appropriate configuration parameters by learning about its physical (hardware portion) and the logical configuration information of the Network devices).

c) transmitting configuration information only for the flexible portion of hardware of the communication device to enable it to operate the communication application; (See Fig. 4, Steps 74-78 and Column 2 Lines 50-52) and

d) transmitting an identification of the communication application to the communication device. (See Column 1 Lines 36-44).

As per claims 2 and 15, wherein the configuration information is hardware configuration parameters. (See ABSTRACT: Reichmeyer disclosed configuration information parameters)

**Claim Rejections - 35 USC § 103**

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 3-13 and 16-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reichmeyer et al. (U.S. Patent Number 6,286,038) in view of Kung et al. (U.S. Patent Number 6,775,267) hereinafter referred to as Kung.

Kung disclosed a QoS application determining data-transmitting rate of the bandwidth in communication with the network device (claims 7-9 and Claims 20-22: See Abstract, Column 2 Lines 30-52). Kung further disclosed processing bill information of usage according to the QoS and adjusting or reducing cost by determining desired and actual QoS used and dropping the QoS when finishing service and billing the user accordingly (claims 11, 12, 24 and 25: See Column 16 Lines 4-29, Column 34 Lines 1-34 and Column 35 Lines 44-65) and evaluating user subscription to the service (claims 5, 18: See Column 40 Lines 25-51). Kung disclosed configuring the network devices for plurality of communication applications (Claims 3 and 16: See Column 23 Lines 14-24), upgrading and changing communication application configurable

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on the network devices (claims 4 and 17: Column 23 Lines 25-29 and Column 35 Lines 35-43) and transmitting specific information in to the flash memory of the network device to upgrade the required configuration of the communication application (Claim 6: Column 23 Lines 14-24). Receiving a user offer based one the user-desired rate/price for a specific QoS and offering the user the requested QoS according to the offer made by the user (claims 13 and 26) was disclosed by the teachings of Kung. See Abstract, Column 2 Lines 20-52 and Column 34 Lines 1-55.

As per claims 10 and 23: With respect to the rejection applied to claims 1 and 10 above, Reichmeyer substantially disclosed the limitation of claims 10 and 23. (See Rejection Applied to claims 1 and 24 above). However, Reichmeyer failed to teach sending information regarding QoS (Quality of Service) and its cost to the client of the network communication device allowing the user to select a desired class of service and based on the selection of specific quality of service at a determined cost and transmitting configuration information to the communication device to allow it to function at the selected quality QoS where the configuration information is directed to the programmable (flexible) part of the communication device. However, as evidenced by the teachings of Kung, sending information regarding QoS (Quality of Service) and its cost to the client of the network communication device allowing the user to select a desired class of service and based on the selection of specific quality of service at a determined cost and transmitting configuration information to the

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communication device to allow it to function at the selected quality QoS where the configuration information is directed to the programmable (flexible) part of the communication device was known in the art at the time the invention was made. See Abstract, Fig. 7a-7c, Column 2 Lines 30-52, Column 3 Lines 20-46, Column 33 Line 66 through Column 35 Line 21 and Column 35 Lines 45-65.

Thus, it is respectfully submitted that it would have been obvious to one of ordinary skill in the art at the time the invention was made to take the teachings of Kung related to allowing users to select desired QoS in a communication network and transmitting configuration information configuring the communication network device to function/execute the application program in according to the selected cost and QoS selected by the end-user in order to allow users get service in accordance with desired QoS selected in real time at a cost the user(s) desire (See Column 3 Lines 20-52) "so that the priority of a given communication can be dynamically altered according to customer preferences, variable billing rates and tariffs, the user's bit rate requirements, the user's desired quality of service, traffic patterns, and/or congestion." See Column 7 Lines 27-34.



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**Conclusion**

8. The prior art made of record and not relied upon (see Form PTO-892) is considered pertinent to Applicant's disclosure.

9. Any inquiry concerning this communication or earlier communication from the examiner should be directed to Yemane Gerezgiher whose telephone number is (571) 272-3927. The examiner can normally be reached on Monday-Friday from 9:00 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful. The examiner's supervisor, William Cuchlinski, can be reached at (571) 272-3925.

*Yemane M. Gerezgiher*  
Patent Examiner

  
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